

**EXHIBIT 1**  
**TO PLAINTIFF'S RESPONSE TO  
DEFENDANTS' JOINT MOTION TO  
DISMISS (DKT. 46)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CRISPINIANA DOMINGO,	)	
Plaintiff,	)	Case No. 18-cv-04653
-vs-	)	
JUSTIN WOODEN, et al.,	)	Chicago, Illinois
Defendants.	)	August 16, 2021
	)	11:51 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS  
BEFORE THE HONORABLE MARTHA M. PACOLD

TELEPHONIC APPEARANCES:

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PROCEEDINGS REPORTED BY STENOTYPE REPORTER  
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1 (Proceedings heard via teleconference:)

2 THE COURTROOM DEPUTY: 18 C 4653, Domingo versus  
3 Wooden.

11:50:45

4 Counsel, if you can state your name for the record,  
5 we'll start with plaintiff's counsel.

6 MR. DVORAK: Yes, good morning. Richard Dvorak for  
7 the plaintiff.

8 THE COURT: And for defense?

11:51:09

9 MR. GRANT: Maurice Grant and Senija Grebovic on  
10 behalf of all defendants.

11 THE COURT: Okay. Good morning, everyone. Thank you  
12 for your patience and apologies for the delay here.

13 I wanted to give you a ruling on the summary judgment  
14 motion. Is there anything we should address before I do that?

11:51:28

15 MR. DVORAK: No, your Honor.

16 MR. GRANT: No, your Honor.

11:51:47

17 THE COURT: Okay. So let me just begin with a brief  
18 overview of the record. The parties are familiar with the  
19 facts of the case, but I'll just start with a brief overview  
20 of the record before I reach the merits of the summary  
21 judgment motion.

11:52:07

22 Plaintiff Crispiniana Domingo was working as a nurse  
23 at the University of Illinois at Chicago Hospital on May 14,  
24 2016, when a co-worker, Defendant Erica Williams, saw Domingo  
25 interacting with a crying eight-month-old baby boy under

1 Domingo's care. Williams reported, first to colleagues and  
2 then to the police, that Domingo was slapping the baby on the  
3 back of his head.

4 Police Officer Justin Wooden was assigned to  
11:52:26 5 investigate the allegations. During his investigation, Wooden  
6 interviewed both Williams and Domingo. Williams and Domingo  
7 gave conflicting versions of events.

8 Williams stated that she had been sitting at her work  
9 station when she heard the baby cry intensely for about  
11:52:48 10 15 minutes. Concerned for the baby's welfare, Williams got up  
11 from her desk and went into the room to check on the baby.  
12 When she entered the room, she witnessed Domingo slapping the  
13 baby approximately three times on the back of his head with an  
14 open hand. Williams explained that she was so shocked by what  
11:53:09 15 she saw that she sent a text message to a co-worker, stating  
16 that she had caught Cris Domingo slapping one of the babies  
17 upside his head.

18 Wooden obtained a copy of Williams's phone records,  
19 which confirmed Williams's testimony about the text message.

11:53:28 20 That was Williams's version of events.

21 Domingo, in contrast, told Wooden that she, Domingo,  
22 never slapped the baby. According to Domingo, she was  
23 attempting to lower the side rail on the baby's crib when the  
24 rail slipped and fell, creating a loud crashing noise that  
11:53:53 25 startled the baby. The baby began to cry, so Domingo picked

1 him up and attempted to soothe him by patting him on the back  
2 of his head. Domingo also stated that Williams came into the  
3 room to deliver a medical ID bracelet, not because she,  
4 meaning Williams, was concerned by the baby's crying.

11:54:17

5 So that was Domingo's version of events.

6 There were no other direct witnesses to the incident,  
7 but Wooden reviewed hospital video surveillance footage which  
8 confirmed that Williams and Domingo had both been in the  
9 baby's room during the time of the alleged slapping incident.

11:54:41

10 Wooden also spoke with another hospital employee, Michael  
11 Carey, who was working near the room where Domingo was caring  
12 for the baby.

11:55:00

13 Carey confirmed that he heard a crashing sound  
14 followed by a baby crying. When he looked into the room, he  
15 saw Domingo picking up the baby.

11:55:21

16 Wooden expanded his investigation, interviewing  
17 several of the baby's doctors and reviewing a comprehensive  
18 medical report authored by Dr. Amanda Fingarson, a  
19 pediatrician who specializes in child abuse. The baby's  
20 doctors explained that the baby had suffered a fresh fracture  
21 to his left arm that was consistent with someone grabbing the  
22 arm, whether inadvertently or deliberately, in combination  
23 with some twisting motion. The fracture emerged at around the  
24 same time as the alleged slapping incident.

11:55:46

25 Doctors also explained, however, that the baby

1 suffered from health conditions that can make bones  
2 particularly susceptible to fractures, although one doctor  
3 stated that this baby's particular test results indicated that  
4 he likely should not be prone to spontaneous fractures.

11:56:11 5 In addition to the arm fracture, the baby showed  
6 signs of two subdural hematomas, meaning pools of blood  
7 between the brain and its outermost covering. A neurologist,  
8 Dr. Saran, explained that subdural hematomas are injuries most  
9 commonly associated with shaken baby syndrome and considered  
11:56:40 10 non-accidental trauma, but also noted that the injury may have  
11 been caused by weak blood vessels in conjunction with strikes  
12 to the back of the head and that the hematomas could be up to  
13 six months old.

14 Moreover, the baby's primary care physician,  
11:57:00 15 Dr. Rossini, concluded that the hematomas were not acute and  
16 did not present with any other signs of abusive head trauma.

17 On July 5th, 2016, Dr. Fingarson drafted and sent to  
18 Wooden a report reviewing all this medical evidence. Her  
19 report explained that she was concerned by -- or concerned for  
11:57:31 20 the possibility of abuse in the baby's case but that due to  
21 the baby's underlying medical conditions, she could not  
22 definitively conclude that an abusive force/action would have  
23 been required to cause the baby's arm fracture.

24 Dr. Fingarson also could not conclude that the baby's  
11:57:55 25 subdural hematomas were necessarily abusive in nature, noting

1 that they could have been caused by trauma but also could have  
2 been caused by a much older birth-related injury.

3 After reviewing all this information, Wooden arrested  
4 Domingo on July 6th, 2016, and charged her with two felony  
5 counts involving aggravated battery to a child. On July 7th,  
6 Domingo's bail was set at \$300,000. It took Domingo and her  
7 family and friends until July 12th to post the requisite bond,  
8 and so during that time, Domingo was in custody between the  
9 arrest on July 6th and posting bond on July 12th.

10 On July 20th, Domingo was indicted on the two felony  
11 counts after a grand jury heard Wooden testify that there was  
12 nothing else that could explain how it was the baby broke his  
13 arm and also sustained trauma to his head besides the actions  
14 of Nurse Crispiniana Domingo.

15 Domingo's criminal trial took place on February 26,  
16 2018. Immediately before trial began, the prosecution amended  
17 the charges against Domingo to a single charge of misdemeanor  
18 battery. That same day, following a bench trial, Domingo was  
19 found not guilty and was released.

20 After her acquittal, Domingo filed this lawsuit,  
21 bringing Section 1983 claims against Wooden for false arrest  
22 and unlawful pretrial detention, as well as a state law claim  
23 for malicious prosecution. The complaint also brings a state  
24 law malicious prosecution claim against Williams. Wooden and  
25 Williams have moved for summary judgment on all claims against

1 them. For the reasons I'll explain, that motion is granted in  
2 part and denied in part.

3 In addition, Domingo has filed an unopposed motion to  
4 substitute an exhibit, which is docket 79, and that motion is  
5 hereby granted.

12:00:32

6 Summary judgment is proper where the movant shows  
7 that there is no genuine dispute as to any material fact and  
8 the movant is entitled to judgment as a matter of law. That's  
9 Rule 56(a). In adjudicating a motion for summary judgment,  
10 the court gives the non-moving party the benefit of reasonable  
11 inferences from the evidence, but not speculative inferences  
12 in its favor.

12:00:53

13 I'll first turn to the false arrest claim against  
14 Wooden.

12:01:10

15 So defendants first seek summary judgment on  
16 Domingo's false arrest claim against Wooden. To prove a claim  
17 for false arrest under the Fourth Amendment -- and, of course,  
18 at this stage, I'm not applying a standard that requires proof  
19 of the claim, but we're applying the summary judgment  
20 standard -- but just to give the elements of the claim for  
21 false arrest under the Fourth Amendment, a plaintiff must come  
22 forward with evidence that the defendant arrested the  
23 plaintiff, that the defendant did not have probable cause to  
24 arrest the plaintiff, and that the defendant acted under color  
25 of law. Probable cause exists if, at the time of the arrest,

12:01:31

12:01:53



1 the facts and circumstances within the defendant's knowledge  
2 are sufficient to warrant a prudent person, or one of  
3 reasonable caution, in believing, in the circumstances shown,  
4 that the suspect has committed an offense. That's *Muhammad v.*  
5 *Pearson*, 900 F.3d 898, 908 (Seventh Circuit 2018).

12:02:14

6 An officer has probable cause to arrest a suspect so  
7 long as he reasonably believes that the suspect committed any  
8 crime, even if it is not the crime ultimately charged. That's  
9 *Devenpeck v. Alford*, 543 U.S. 146 (2004).

12:02:37

10 In addition, where a defendant has raised a qualified  
11 immunity defense to a false arrest claim, as Wooden has done  
12 here, he is shielded from suit so long as a reasonable officer  
13 could have believed probable cause existed even if that belief  
14 was mistaken. *Fleming v. Livingston County, Illinois*, 674  
15 F.3d 874, 878, Seventh Circuit 2012. In other words, the  
16 defendant is protected so long as there was arguable probable  
17 cause to support the plaintiff's arrest. *Fleming* case at  
18 page 880.

12:03:00

19 Wooden argues that he had at least arguable probable  
20 cause to arrest Domingo and that the doctrine of qualified  
21 immunity thus bars Domingo's false arrest claim. The  
22 existence of probable cause depends in the first instance on  
23 state law. Federal law asks only whether the officers had  
24 probable cause to believe that the predicate offense, as the  
25 state has defined it, has been committed. *Williams v.*

12:03:23

12:03:46

1 *Jaglowski*, 269 F.3d 778, 782 (Seventh Circuit 2001).

2           Here Wooden argues that there was probable cause to  
3 suspect Domingo of committing misdemeanor battery under 720  
4 ILCS 5/12-3. That statute provides that a person is guilty of  
5 misdemeanor battery "if he or she knowingly, without legal  
6 justification by any means (1) causes bodily harm to an  
7 individual or (2) makes physical contact of an insulting or  
8 provoking nature with an individual."

9           At the time Officer Wooden arrested Domingo, his  
10 investigation revealed the following information:

11           Williams saw Domingo touching the baby on the back of  
12 the head several times with an open hand. Williams  
13 characterized these touches as slaps and said that she,  
14 Williams, came into the room because she had heard the baby  
15 crying for a prolonged period of time. Domingo, on the other  
16 hand, characterized these touches as comforting pats, and said  
17 that Williams only came into the room to deliver a medical  
18 bracelet.

19           Williams's testimony was supported by a text message  
20 she sent to her colleague immediately after leaving the room  
21 where Domingo had been holding the baby.

22           The baby had sustained a fresh left-arm fracture  
23 during the time it was under Domingo's care. This fracture  
24 occurred at around the same time as the alleged slapping  
25 incident.

1           The baby had also sustained two subdural hematomas of  
2 uncertain ages, which doctors stated could have been caused by  
3 slapping, but also could have been caused by a birth injury.

4           Dr. Fingarson's report concluded that the baby's  
5 injuries were consistent with acute trauma and raised concerns  
6 for abuse. Nevertheless, neither Dr. Fingarson, nor any of  
7 the baby's other doctors, were able to say with certainty that  
8 the baby's injuries were caused by abuse, nor could any doctor  
9 rule out the possibility of abuse.

10           While this conflicting evidence may not have been  
11 enough to support a conviction, it was enough to support an  
12 arrest for misdemeanor battery as a matter of law. The  
13 Seventh Circuit has held that the testimony of a single  
14 impartial eyewitness is sufficient to support probable cause  
15 for an arrest. *Bailey v. City of Chicago*, 779 F.3d 689, 694  
16 (Seventh Circuit 2015). See also *Phillips v. Allen*, 668 F.3d  
17 912, 915 (Seventh Circuit 2012).

18           Here Wooden's arrest was supported not only by the  
19 testimony of an eyewitness who had no apparent grudge against  
20 Domingo and no apparent motive to lie, but also by medical  
21 evidence of physical trauma that doctors described as being  
22 consistent with and raising concerns of intentional child  
23 abuse.

24           Any reasonable jury would conclude that these pieces  
25 of evidence, taken together, are enough to justify a

1 reasonably cautious person in believing that Domingo satisfied  
2 the elements of misdemeanor battery by knowingly (1) causing  
3 bodily harm to the baby or (2) making physical contact with  
4 the baby in an insulting or provoking way.

12:07:36 5 Domingo argues that Wooden should have believed  
6 Domingo's own version of events over Williams's because  
7 Williams undermined her credibility by giving inconsistent  
8 testimony about the reason why she entered the baby's room in  
9 the first place. Williams initially stated she entered the  
10 room because she was alarmed by the crying baby, but in her  
11 deposition, she indicated that she entered the room to deliver  
12 a medical ID bracelet.

13 Domingo argues that the video surveillance reviewed  
14 by Officer Wooden would have confirmed that Williams was  
12:08:08 15 delivering a medical bracelet. This apparent inconsistency  
16 may have been enough to require Officer Wooden to further  
17 investigate Williams's claims, but Wooden did precisely that.  
18 Wooden's extensive investigation did not turn up any evidence  
19 that contradicted Williams's core claim that Domingo had  
12:08:28 20 slapped the baby apart from Domingo's own denial.

21 Moreover, Wooden's investigation uncovered medical  
22 evidence of recent physical trauma that doctors believed  
23 raised concerns of non-accidental child abuse, thus lending  
24 additional plausibility to the notion that Domingo knowingly  
12:08:45 25 injured the baby.

1           The Seventh Circuit has held that an officer faced  
2 with a suspect who denies otherwise plausible witness  
3 testimony may arrest that suspect and let prosecutors and  
4 courts determine who is telling the truth. *Askew v. City of*  
5 *Chicago*, 440 F.3d 894, 895 (Seventh Circuit 2006). That is  
6 what Wooden did here. Wooden, thus, had at least arguable  
7 probable cause to arrest Williams -- I'm sorry -- Domingo and  
8 is, at a minimum, entitled to qualified immunity on this  
9 count.

10           Turning to the unlawful pretrial detention claim. As  
11 with Domingo's false arrest claim, the parties dispute whether  
12 Domingo's pretrial detention, which again lasted from July 6th  
13 through July 12, 2016, was supported by probable cause. But  
14 whereas an arrest is constitutional so long as the officer had  
15 probable cause to believe that the suspect committed any  
16 offense, pretrial detention beyond what is known as the  
17 Gerstein hearing must be justified by probable cause  
18 supporting the specific offenses charged. In other words, as  
19 Domingo argues, and as defendants do not contest, the probable  
20 cause inquiry is charge-specific.

21           The two charges that form the basis of Domingo's  
22 pretrial detention were felony charges, yet defendants argue  
23 only that there was probable cause to believe Domingo  
24 satisfied elements of Illinois's misdemeanor battery statute,  
25 720 ILCS 5/12-3. Defendants do not discuss, cite, or even

1 name, the felony charges that formed the basis of Domingo's  
2 pretrial detention. I, therefore, cannot determine whether  
3 probable cause supported or arguably supported the felony  
4 charges without knowing the elements of those charges and  
5 without some explanation of why a reasonable person could have  
6 believed that Domingo's conduct satisfied those elements.

7 And so defendants' motion for summary judgment on the  
8 pretrial detention claim is denied. See *United States v.*  
9 *Dunkel*, 927 F.2d 955, 956 (Seventh Circuit 1991) (undeveloped  
10 or skeletal arguments are waived).

11 Domingo's final claim against Wooden involves the  
12 state law tort of malicious prosecution. This claim requires  
13 a plaintiff to show (1) the commencement or continuance of an  
14 original criminal or civil judicial proceeding by the  
15 defendant; (2) the termination of the proceeding in favor of  
16 the plaintiff; (3) the absence of probable cause for such  
17 proceeding; (4) the presence of malice; and (5) damages  
18 resulting to the plaintiff. *Swick v. Liautaud*, 169 Ill.2d  
19 504, 512 (1996).

20 Defendants argue that Domingo cannot establish either  
21 the presence -- either the absence of probable cause or the  
22 absence -- or the presence of -- let me say that again.

23 Defendants argue that Domingo cannot establish either  
24 the absence of probable cause or the presence of malice, and I  
25 will address each of those arguments in turn.

1 First, defendants' probable cause argument is  
2 underdeveloped in the malicious prosecution context for the  
3 same reason that it is underdeveloped in the pretrial  
4 detention context; namely, the probable cause inquiry and the  
5 malicious prosecution context is charge-specific -- see docket  
6 55 at page 11 conceding this point -- and the charges that  
7 spurred the commencement of criminal proceedings against  
8 Domingo were felony charges. Yet defendants argue only that  
9 there was probable cause to support a prosecution based on the  
10 subsequent charge of misdemeanor battery. Again, this  
11 argument is insufficient to justify entry of summary  
12 judgment because Domingo argues and, as defendants do not  
13 contest, Domingo can proceed with her malicious prosecution  
14 claim based on the felony charges alone.

15 Defendants' argument regarding malice is also not  
16 persuasive. Under Illinois law, a plaintiff may demonstrate  
17 malice by showing that the defendant facilitated the  
18 prosecution for the purpose of injuring plaintiff or for some  
19 other improper motive. An improper motive for a prosecution  
20 is any reason other than to bring the party to justice. *Kuri*  
21 *v. Folino*, 409 F.Supp. 3rd 626, 648 (Northern District of  
22 Illinois 2019). A jury may infer malice if it finds that a  
23 witness knowingly fabricated, concealed, or mischaracterized  
24 evidence because that type of misconduct is clearly not  
25 designed to bring a truly guilty party to justice. Here,

1 Domingo alleges that Wooden lied to the grand jury when he  
2 testified that nothing else could explain how it was the baby  
3 broke his arm and also sustained trauma to his head besides  
4 the actions of Nurse Crispiniana Domingo that night, despite  
5 having been told by numerous doctors that there were alternate  
6 explanations for the baby's injuries and despite knowing that  
7 Dr. Fingarson's investigation of abuse was inconclusive.

8 This raises facts and credibility issues for the  
9 jury. If the jury were to believe Domingo, the jury could  
10 conclude that Wooden's testimony was knowingly untruthful and,  
11 therefore, motivated by malice. But if the jury were to  
12 believe -- were not to believe Domingo and were to believe  
13 Wooden, then they could find the other way.

14 Accordingly, defendants' motion for summary judgment  
15 on the malicious prosecution claim against Wooden is denied.

16 Domingo's last remaining claim alleges malicious  
17 prosecution by Erica Williams. Defendants argue that Domingo  
18 cannot prove Williams acted maliciously because Williams and  
19 Domingo had a good working relationship with no prior  
20 disagreements, but defendants do not cite, and the Court is  
21 not aware of, any authority holding that the absence of prior  
22 disagreements precludes a finding of malice.

23 Indeed, as I noted earlier, a jury typically can  
24 infer malice if it finds that a witness lied to further a  
25 prosecution. Domingo alleges that this is what happened here.



1 She first alleges that Williams lied about her, that  
2 is, Williams's motive for going into the baby's room.  
3 Williams told police that she entered the room because she  
4 heard the baby crying continuously for 15 minutes, but Domingo  
5 argues, and Williams subsequently admitted, that Williams went  
6 into the room to deliver a medical bracelet instead.

7 Next Domingo alleges that she, Domingo, touched the  
8 baby only by giving him soothing pats, not forceful slaps, and  
9 that the true nature of her contact with the baby would have  
10 been obvious to Williams. According to Domingo, Williams lied  
11 about the nature of Domingo's contact with the baby when she  
12 described it as forceful slapping.

13 Williams offers a different version of events, and,  
14 again, this is a credibility and a fact issue for the jury,  
15 and so summary judgment is inappropriate on this claim as  
16 well.

17 And for all these reasons, defendants' motion for  
18 summary judgment is granted on the false arrest claim against  
19 Wooden and denied as to the remaining claims.

20 I'll direct the parties to file a joint status report  
21 by August 30th, 2021, which is in two weeks, that, No. 1,  
22 describes the expected length of trial; No. 2, lists dates on  
23 which the parties are mutually available for trial over the  
24 course of the next 12 months; and, No. 3, indicates whether  
25 the parties are interested in continuing to participate in

1 settlement negotiations supervised by Judge Jantz pending  
2 trial.

3 I will reiterate these requirements in a minute entry  
4 that will be posted on the docket later today. In addition,  
5 the parties may request a transcript of today's ruling from  
6 the bench if the parties wish to review my reasoning or the  
7 details of today's holding.

8 Thank you, everyone. Have a good afternoon.

9 Is there anything else anyone would like to raise?

10 MR. DVORAK: No, your Honor. Thank you.

11 MR. GRANT: No, your Honor. Thank you.

12 MS. GREBOVIC: Thank you, Judge.

13 THE COURT: Thank you, everyone. Take care.

14 (Which were all the proceedings heard.)

15 CERTIFICATE

16 I certify that the foregoing is a correct transcript from  
17 the record of proceedings in the above-entitled matter.

18 /s/Kathleen M. Fennell

September 8, 2021

19

20 Kathleen M. Fennell  
Official Court Reporter

\_\_\_\_\_  
Date

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